IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 83 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/12/2004 in WPMP.NO. 30415 OF 2004 IN WP NO : 23189 OF 2004 on the file of the High Court.)

Between:

M/s. Gandeva Properties Private Limited, Rep. by its Director, Mahabir Prasad Agrawal,
S/o. (Late) K.L. Agarwal, aged about 51 years, No. 612, Swapnalok Complex, Sarojini Devi Road,
Secunderabad.

..... APPELLANT

AND

1 Government of Andhra Pradesh, Rep. by its Principal Secretary,
Municipal Administration and Urban Development Department, Secretariat, Hyderabad.
2 Visakhapatnam Urban Development Authority, Rep. by its Vice Chairman and Managing Director,

Visakhapatnam.

.....RESPONDENTS

Counsel for the Appellant : MR. MUKUL ROHTAJI SRI FOR MR. V.VENKATARAMANA

Counsel for the Respondent No.1: GP FOR MUNCIPAL ADMN. & URBAN DEV.

Counsel for the respondent No.2: MR. NUTY RAM MOHAN RAO.

The Court made the following :

ORAL JUDGMENT:

(per Hon'ble The Chief Justice)

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1. Challenge by the appellant in this appeal is to the interim order passed by the learned single Judge on 15.12.2004. By the said order, while issuing rule nisi, on the interim application learned single Judge directed that in the meanwhile tender process may go on, but they shall not be finalized. This order was continued till further orders on 29.12.2004.

2 . The petitioner has filed writ petition questioning the action of 1st respondent in issuing Memo dated 20.11.2004 and the consequential letter issued by 2nd respondent canceling the contract of Rushikonda Township Project awarded to the petitioner, as arbitrary and without jurisdiction.

3 . On 20.11.2004 Principal Secretary to Government of A.P., Municipal Administration & urban Development Department, addressed a letter to the Vice Chairman, Visakhapatnam Urban Development Authority, saying that issue of Rushikonda Township Project has been reviewed by the Government, but in view of steep increase in the prices of real estate in Visakhapatnam, direction was issued to immediately cancel the tender process and invite fresh bids and to confirm the action taken by return post. 2nd respondent, as a follow-up action, cancelled the contract on 23.11.2004. Needless to add that petitioner has already invoked the arbitration clause by appointing the Arbitrator and respondent No.2 has also appointed its Arbitrator. Board of Arbitrators have since entered upon the reference. Petitioner has prayed in the arbitration proceedings a declaration that agreements dated 15.12.2003 and 09.03.2004 are subsisting and binding and also for specific performance of agreements entered into between petitioner and respondent No.3 with further direction to direct Visakhapatnam Urban Development Authority to execute development agreement-cum-G.P.A., and for passing an award for loss and damages, etc.

4. Rule Nisi was issued in the writ petition at the initial stage when there was no counter-affidavit from the respondents. Counter-affidavit has not yet been filed. The order impugned is only an ad-interim order that in the meanwhile tender process may go on, but they shall not be finalized. Learned counsel for the appellant submits that learned single Judge failed to suspend the Memo of the Government dated 20.11.2004 which ought to have been done.

5 . Learned single Judge, on due appreciation of the case set up by the

petitioner, exercised discretion in protecting the rights of the petitioner to the extent that tender process, which was already in progress, may go on, but it shall not be finalized. With such a discretionary order, at this stage of proceedings, there is hardly any ground to interfere, more particularly when there is already an arbitration clause invoked by the petitioner. May be that after counter-affidavits are filed by the respondents and in case a good ground is made out by the petitioner, then he will be entitled to further relief. But at this stage beyond the order passed by the learned single Judge, in our opinion, there was no occasion to have issued any further order. For that reason, we find no force in the appeal and the same is hereby dismissed. However, we make it clear that any observations made by us will not come in the way of the parties in the merits of the respective claims in the pending writ petition or in the arbitration proceedings. No costs.

6 . Since counter-affidavit has not been filed by the respondents, learned single Judge directed the writ petition to be posted after Pongal Vacation. Learned counsel for respondent No.2 states that counter-affidavit will be filed by 21.02.2005. Writ petition be posted before the learned single Judge for hearing on priority basis and shall come up on 01.03.2005.

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DEVINDER GUPTA. C.J.,

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M. NARAYANA REDDY. J.,

Dated: 03.02.2005.

VRK.

To

1 The Principal Secretary to Govt.,
Municipal Administration and Urban Development Department, Secretariat, Hyderabad.
2 The Vice-Chairman & Managing Director, Visakhapatnam Urban Development Authority, Visakhapatnam.

3. Two CCs to G.P., for Municipal Admn., & Urban Development, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.